

1 **Tony H. Ashtiani**
P.O.Box 12723
2 Tamuning Guam 96931
671-688-4844
3 671-653-5575

FILED
DISTRICT COURT OF GUAM

AUG 30 2004

MARY L. M. MOBAN
CLERK OF COURT

UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

9 **Tony H. Ashtiani,**

10 Plaintiff,

11 Vs.

12 **Continental Micronesia Inc,**

13 **Db, Continental Micronesia,**

14 **Continental Airlines,**

15 Defendant
16
17
18
19

) Civil Case No.: 02-00032

) **MOTION FOR ORAL ARGUEMENT**
) **BEFORE THE DECIDING JUDGE.**

) **Fed.R.Civ.P. 63**

20 Plaintiff respectfully files this Motion for oral argument
21 before the Honorable visiting U.S District Judge due to pending
22 motions of Plaintiff's Motion for Partial Summary Judgment and
23 Defendants Motion for Summary Judgment, Honorable chief judge
24 John S. Unpingco that heard the argument that was familiar with
25 all aspects of the case stepped down from the bench on April 30th
2004.

ORIGINAL

1 The Motions are to be decided before the visiting Honorable
2 U.S District judge and it stands to reason that a hearing be set
3 before the Honorable judge. It is worthy of note that after
4 December 12, 2003 hearing there were other documents and
5 affidavit presented to the this Honorable Court pursuant to
6 F.R.C.P 56(e) and Local rule 7.1 and parties motion to strike
7 were decided by Honorable Chief judge John S. Unpingco. Please
8 see Order April 23 2004.

9
10 **Federal Rule of Civil Procedure Rule 63**
11

12 F.R.C.P 63 States "(If trial or hearing has been commenced and
13 the judge is unable to proceed, any other judge may proceed with
14 it upon certifying familiarity with the record and determining
15 that the proceedings in the case may be completed without
16 prejudice to the parties")

17
18 Notes on advisory committee on 1991 amendments. The revision
19 substantially displaces the former rule. The former rule was
20 limited to the disability of the judge, and made no provision or
21 possible other reasons for the withdrawal of the judge during
22 proceeding.

23
24 Here, Honorable Chief Judge John S. Unpinco stepped down from
25 the bench as "possible other reasons for the withdrawal of the

1 judge during proceeding" as states in the 1991 amendments as a
2 provision governing Rule 63.

3
4 Fed.R.Civ.P 63 states "(In a hearing without jury") Plaintiff
5 understands summary judgment as a trial or hearing without jury
6 before the ultimate fact finder. Thus, Rule 63 also applies to
7 summary judgment proceedings. The successor judge may also ask
8 counsel question about motions that have been filed, even if
9 those motions were fully briefed and argued before the original
10 judge.

11
12 In Dredge v. penney , 338 F. 2d 456 (9th Cir. 1964), we stated
13 that "(a district court may not, by rule or otherwise, preclude
14 a party from requesting oral argument, nor deny such a request
15 when made by a party opposing the motion") id at, 462.

16
17 Fed R. Civ. P. 63 States ("In a hearing or trial without a
18 jury, the successor judge shall at the request of a party,
19 recall any witness whose testimony is material") Here, the
20 statutory language of the congress states "a party" as singular
21 and not plural. Thus, Plaintiff is a requesting party and is
22 also a material witness. The Court has discretion to call other
23 witnesses as well if called upon to determine credibility of
24 witnesses and seeing them testify. See Advisory Committee Notes
25 to 1991 Amendment. Cf. Anderson v. city of bessemer city, North

1 Carolina, 470 U.S. 564, 575, 84 L.Ed. 2d 518, 105 S. Ct 1504
2 (1985); Marshall v. Jerrico Inc., 446 U.S. 238, 242, 64 L. Ed 2d
3 182, 100 S.Ct 1610 (1980). See Also United States v. Radats, 447
4 U.S. 667, 65 L. Ed 2d 424, 100 S.Ct. 2406 (1980)

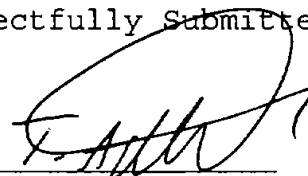
5
6 Finally, The successor judge may entertain post-trial motions
7 Mergen time Corp. v. Washington Metropolitan Area Transit
8 Authority, 166 F. 3d 1257, 1263-64 (D.C Cir.1999).

9
10 Conclusion

11
12 Because Plaintiff is a requesting party and because
13 plaintiff is a material witness and because it stands to reason
14 that a hearing be conducted before the deciding judge, pro se
15 plaintiff humbly request that this Motion be granted and an
16 Order be issued for a hearing by a U.S District judge.

17
18
19 Dated : This 30th day of August 2004.

20
21 Respectfully Submitted,

22 
23 _____

24 Tony H. Ashtiani,

25 Pro se, Plaintiff